

REMARKS

Applicants greatly appreciate the courtesy extended to them during the interview of April 9, 2003.

Claims 1-46 are presently pending.

Claims 27-46 stand rejected under 35 U.S.C. § 101 because of an alleged lack of technical basis in the body of the independent claims.

Claims 2, 5, and 13 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite.

No rejections or objections have been asserted against claims 1, 3-4, 6-12, and 14-26. Accordingly, these claims are considered allowable.

Responsive to the Office Action, Applicants have amended claims 27, 32 and 36. Claims 1-46 are presently pending.

The Interview of April 9, 2003

Applicants' representative thanks the Examiner for the interview of April 9, 2003. During the interview, Applicants noted that claims 27-46 fully satisfy the standard for patentable subject matter under 35 U.S.C. § 101 set forth in the Examination Guidelines for Computer-Related Inventions. *Manual of Patent Examiner Procedure* § 2106. The Examiner indicated that the rejection was based on an interpretation of *In re Bowman*, an unpublished decision of the Board of Patent Appeals and Interferences. The Examiner provided a copy of the unpublished opinion to Applicants' representative. The Examiner took the position that Section 101, in

accordance with *In re Bowman*, requires that the body of the independent method claims recite structure to prevent the steps from being performed in a person's mind.

The Examiner agreed to rescind the rejection of claim 2 under 35 U.S.C. § 112, second paragraph, and reconsider the rejections of claims 5 and 13.

Claims 1-4, 6-12, and 14-26 Are Allowable Because They Are Not Rejected

The Office Action does not assert any rejections or objection to claims 1, 3-4, 6-12, and 14-26. During the Interview, the Examiner agreed to withdraw the only rejection asserted for claim 2. 37 C.F.R. § 1.104(c)(1) provides that "[I]f an invention is not considered patentable, or not considered patentable as claimed, the claims, or those considered unpatentable will be rejected." Because claims 1-4, 6-12, and 14-26 are not rejected, they are allowable. Moreover, *Manual of Patent Examiner Procedure* § 707.07(i) instructs examiners to avoid piecemeal prosecution. The examiner is to reject each claim on all valid grounds available. As the present Office Action is the second in this case, the Examiner has reviewed claims 1-4, 6-12, and 14-26 twice and there is no current rejection of them. Accordingly, these claims are plainly allowable.

The Rejection of Claims 5 and 13

Dependent claims 5 and 13 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicants respectfully traverse the rejection. The examiner should not reject claims under Section 112 if the claims "define the patentable subject matter with a reasonable degree of particularity and distinctiveness." *Manual of Patent Examining Procedure* at § 2173.02.

Claim 5 recites an n-dimensional data structure, “where n is 3 or more.” The Examiner asserts that the term “more” is indefinite because “an artisan of ordinary skill would not know the boundaries of such a limitation.” Applicants respectfully disagree. One of ordinary skill would certainly understand the meaning of “3 or more.” For example, “2” is outside the scope of “3 or more” because 2 is less than 3. However, “5” would fall within the scope of “3 or more” because 5 is more than 3. This rejection should be withdrawn.

Claim 13 recites that “the receiver interface receives the market price information for the first traded item *indirectly* from the exchange via an exchange interface.” The Examiner asserts that this language is “ambiguous because it is not understood how the market price information for the first traded item is received from the exchange.” Again, Applicants respectfully submit that the language of claim 13 fully satisfies the requirements of Section 112. Claim 13 is not ambiguous. It provides that the receiver interface receives the market price information for the first traded item indirectly from the exchange via an exchange interface. Claim 13 “define[s] the patentable subject matter with a reasonable degree of particularity and distinctiveness,” as required by Section 112. Accordingly, the rejection of claim 13 should be withdrawn.

The Rejection under 35 U.S.C. § 101

Applicants respectfully traverse the rejection under Section 101. To speed prosecution of this application, Applicants have amended claims 27, 32, and 36 without prejudice or disclaimer. Applicants expressly reserve the right to prosecute the claims in their pre-amended form in a continuation application.

Amended claims 27, 32, and 36 each recite the step of using equipment to perform the trading, i.e., the trading is automated. The use of equipment to perform the trading is taught throughout the present specification. Accordingly, claims 27, 32, and 36 each include a "technical basis" in the body of the claims that the Examiner believes is required by Section 101. At least for this reason, the rejection under Section 101 should be withdrawn.


Conclusions

Applicants respectfully submit that the claims are in conditions for allowance and request favorable action.

Except for issue fees payable under 37 C.F.R. 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 50-0310.

This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. §1.136(a)(3).

Respectfully submitted,
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